IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-01-2007

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.45520 of 2006
And
M.P.Nos.2 and 3 of 2006
And
Contempt Petition No.764 of 2006

W.P.No.45520/2006:

Deen Dayal Medical and Educational
Trust Rep., by its Chairman and
Manager Trustee, Dr.T.D.Naidu,
Anna Nagar,Chennai-40. .. Petitioner

Vs.

1.The State Government of Tamil Nadu,
rep., by its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.

2.Director of Medical Education,
Kilpauk,
Chennai-9. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in particular the records of the second respondent in Ref.No.73144/ME1/3/2006 dated 20.11.2006 and quash the same and direct the first respondent to issue Essentiality Certificate to establish "Deen Dayal Hospital and Medical Research Institute at Thiruvallur Taluk, Chennai, Tamil Nadu with 150 intake based on the inspection report dated 1.9.2006 within a short reasonable time.

Contempt Petition No.764/2006:

Deen Dayal Medical and Educational
Trust Rep., by its Chairman and
Manager Trustee, Dr.T.D.Naidu,
Anna Nagar,Chennai-40. .. Petitioner

Vs.

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1.V.K.Subburaj, I.A.S.,
Secretary,
Govt. of Tamil Nadu,
Health and Family
Welfare Department,
Fort St. George,
Chennai-9.

2.P.Vijayalakshmi, M.D.,
Directorate of Medical Education,
Kilpauk, Chennai-10. .. Respondents

Petition filed under Sections 10 and 12 of the Contempt Courts Act, to punish the respondents for committing gross and willful contempt of this Court's Order in W.P.No.22207 of 2006 dated 26.7.2006.

For Petitioner in WP and
Contempt Petition : Ms.B.Saraswathi

For Respondents in WP and
Contempt Petition : Mr.R.Viduthalai,
Advocate General for
Mr.M.Sekar, Special
Govt. Pleader (Education)

COMMON ORDER

The petitioner submitted an application on 9.5.2005 to the respondents for the grant of an "Essentiality Certificate" to establish a Medical College by name "Deendayal Medical College" at Tiruvallore. The petitioner also applied to the Union of India on 1.8.2005, seeking permission under Section 10-A of The Indian Medical Council Act,hereinafter called as the 'Act', for establishing the Medical College.

2. By a letter dated 23.8.2005, the Union of India directed the petitioner to obtain Essentiality Certificate within a fortnight, failing which the Union of India threatened to return the proposal. Therefore, the petitioner filed a writ petition in W.P.No.30285 of 2005, challenging the action of the Union of India and an interim order was granted in WPMP No.3319 of 2005 restraining the Union of India from returning the proposal.

3. Simultaneously, the petitioner also filed W.P.No.28558 of 2005 against the first respondent seeking a direction to consider their application for the issue of Essentiality Certificate. By an order dated 6.9.2005, the said writ petition was ordered directing the first respondent to consider the applications of the petitioner dated 9.5.2005 and 1.8.2005 and to pass orders within a period of twelve days.

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4. In pursuance of the said order, an Inspection Team was constituted on 23.1.2006 and the Team inspected the institution on 6.2.2006 and submitted a report. Based upon the said report, the first respondent issued G.O.(D) No.356, Health and Family Welfare (MCA-2) Department, dated 28.4.2006, refusing to grant Essentiality Certificate, on the ground that there were certain deficiencies.

5. Challenging the said Government Order dated 28.4.2006, the petitioner filed W.P.No.22207 of 2006. In the meantime, the petitioner also sent a compliance report on 19.5.2006, claiming to have rectified the deficiencies.

6. In view of the claim of the petitioner regarding compliance, the writ petition in W.P.No.22207 of 2006 was disposed of by an order dated 26.7.2006, directing the respondents to re-inspect the institution, within three weeks and pass appropriate orders in accordance with law.

7. Within three days of the disposal of the said writ petition, the second respondent issued proceedings dated 29.7.2006, constituting an Inspection Team, the Inspection Team conducted an inspection on 2.8.2006 and submitted a report on 10.8.2006 pointing out certain deficiencies and recommended that the issue of Essentiality Certificate can be considered after rectification of the defects.

8. In pursuance of the said report dated 10.8.2006, the first respondent issued a letter dated 28.8.2006 directing the petitioner to rectify the defects pointed out in the Inspection Report, to enable the Government to process the application further.

9. The petitioner submitted a compliance report on the very next day viz., 29.8.2006, on the basis of which, the second respondent nominated an Officer, by his proceedings dated 29.8.2006, to conduct an inspection and to submit a report. The said Officer nominated by the second respondent conducted an inspection on 1.9.2006 and submitted a report on the same day viz., 1.9.2006 recommending the issue of Essentiality Certificate for the academic year 2006-2007.

10. Since the Government did not pass orders on the basis of the said Inspection Report, the petitioner filed a contempt petition in Contempt Petition No.764 of 2006, complaining willful disobedience of the order dated 26.7.2006 passed in W.P.No.22207 of 2006. Notice was ordered in the said contempt petition and the respondents appeared in person on 7.11.2006 and took time to file a counter. Therefore, the contempt petition was adjourned to 5.12.2006 for counter.

11. In the meantime, the Government issued a letter on 7.11.2006, the same day on which the respondents appeared in person, directing the second respondent to furnish clarifications on the Inspection Report dated 1.9.2006 and directing the second respondent to depute a team of two Officers for fresh inspection and submission of reports.

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12. In pursuance of the communication dated 7.11.2006 issued

by the Government, the second respondent constituted another Inspection Team by his proceedings dated 20.11.2006. Challenging the said communication, the petitioner has filed the present writ petition in W.P.No.45220 of 2006.

13. I have heard Ms.B.Saraswathi, learned counsel appearing for the petitioner in the writ petition as well as in the contempt petition and Mr.R.Viduthalai, learned Advocate General appearing for the respondents in the writ petition and the contemnors in the contempt petition.

14. Ms.B.Saraswathi, learned counsel appearing for the petitioner in the writ petition as well as in the contempt petition strenuously contended -

(a) that after the Inspecting Officer appointed by the second respondent by his proceedings dated 29.8.2006, conducted an inspection on 1.9.2006 and submitted a report on the same day viz., 1.9.2006, recommending the issue of Essentiality Certificate, it was no longer open to the first respondent to constitute another Inspection Team by the impugned proceedings dated 20.11.2006;

(b) that the action of the respondents in constituting another Inspection Team by the impugned proceedings dated 20.11.2006, is vitiated by mala fides inasmuch as it was done after the appearance of the respondents in the contempt petition on 7.11.2006 and there was not even a mention of the inspection dated 1.9.2006 in the impugned proceedings dated 20.11.2006; and

(c) that the scope of inspection and enquiry to be conducted by the respondents for the grant of Essentiality Certificate is very limited, in view of Section 10-A of the Act and the various decisions of this Court and the Supreme Court and hence the deficiencies repeatedly sought to be projected by the State Government, exhibit the exercise of a jurisdiction not vested with the State Government by law.

15. Per contra, Mr.R.Viduthalai, learned Advocate General appearing for the respondents contended -

(a) that the circumstances surrounding the issue of the Inspection Report dated 1.9.2006 in favour of the petitioner were suspicious, forcing the Government to constitute an Inspection Team;

(b) that the track record of the petitioner-Trust in running an Engineering College, forced the Government to adopt a cautious approach;

(c) that the non-joinder of Medical Council of India as a party to the writ petition was fatal to the maintainability of the writ petition;

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(d) that the impugned order dated 20.11.2006 issued by the second respondent is a sequel to the Government letter dated 7.11.2006, which had not been challenged by the petitioner, dis-entitling the petitioner to seek any relief against the consequential order and

(e) that after the amended regulations of the Medical Council of India, the scope of Inspection and enquiry to be conducted by the Government, even for the grant of Essentiality Certificate, had been enlarged.

16. At the outset, I am unable to accept the submission of the learned Advocate General that the failure to implead the Medical Council of India is fatal to the case. The Medical Council of India comes into picture only after the issue of Essentiality Certificate by the State Government and the present lis is only between the petitioner and the State Government. Therefore, Medical Council of India is neither a necessary party nor a property party to the proceedings. Similarly, the contention that the original order of the Government dated 7.11.2006 has not been challenged and hence the consequential order of the second respondent dated 20.11.2006, cannot be challenged, does not also merit acceptance. The original order of the Government dated 7.11.2006 is not addressed to the petitioner and the petitioner has received only the consequential order dated 20.11.2006. The original order dated 7.11.2006 is only an internal communication between the first respondent and the second respondent. Therefore, the petitioner could not have challenged the same. Hence the challenge to the order dated 20.11.2006 of the second respondent, is perfectly maintainable.

17. Coming to the core issue, it is seen from the facts narrated in paragraphs-1 to 12 above, that after the disposal of the writ petition in W.P.No.22207 of 2006 by an order dated 26.7.2006, an Inspection Team was constituted by the second respondent by his proceedings dated 29.7.2006 and the said Team conducted an inspection on 2.8.2006 and submitted a report on 10.8.2006. Based upon the said report, the first respondent passed an order dated 28.8.2006 pointing out seven deficiencies in the infrastructural facilities and directing the petitioner to rectify the same to enable the Government to process the application further.

18. In response to the said letter of the Government dated 28.8.2006, pointing out seven deficiencies, the petitioner sent a compliance report on 29.8.2006 and the second respondent appointed an Officer to conduct an inspection by his proceedings dated 29.8.2006. The Officer conducted the inspection on 1.9.2006 and submitted a report on the same day viz., 1.9.2006 recommending the issue of the Essentiality Certificate. Thus, things happened in quick succession, within a span of about five days from 28.8.2006 to 1.9.2006. It has to be mentioned at the risk of repetition that the letter pointing out deficiencies is dated 28.8.2006 and the compliance report claiming rectification of deficiencies is dated 29.8.2006. It is not known as to when the letter dated 28.8.2006 pointing out deficiencies, left the Office of the first respondent, enabling the petitioner to send a compliance report on the

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very next day viz., 29.8.2006. Interestingly, the compliance report dated 29.8.2006 submitted by the petitioner to the first respondent attracted immediate attention as well as action of the second respondent and the second respondent appointed an Inspection Officer on the very same day viz., 29.8.2006. The Inspection Officer conducted the inspection on 1.9.2006 and submitted a favourable report on the very same day viz., 1.9.2006.

19. The speed with which and the manner in which the aforesaid events took place, appears to have created a suspicion for the Government. The suspicion, in my considered view, is justified for the following reasons:-

(a) The letter pointing out deficiencies, the letter reporting removal of deficiencies and an order appointing an Inspection Officer, have all happened in just two days viz., 28.8.2006 and 29.8.2006, without any breather for any of the parties and hence the claim of the petitioner that the deficiencies have been rectified, does not inspire any confidence.

(b) While the constitution of an Inspection Team under the order of the second respondent dated 29.7.2006, is in pursuance of a Government letter dated 27.7.2006, the constitution of an Inspection Officer under the letter dated 29.8.2006 of the second respondent, was not in pursuance of any order or direction issued by the Government. In other words, the second respondent issued the order dated 29.8.2006 appointing an Inspection Officer, even without reference to the Government and hence the suspicion of the Government about the conduct of the second respondent appears to be bona fide.

(c) while on all earlier occasions viz., under order dated 23.1.2006 and under order dated 29.7.2006, the appointment was of an "Inspection Team" consisting of two or more Officers, the appointment under the letter dated 29.8.2006 of the second respondent was of a single Officer. Therefore, the Government was justified in not being able to accept the report of the single Inspection Officer.

(d) Interestingly, all the Officers appointed to the Inspection Team on all earlier occasions (viz., in January 2006 and July 2006), were Officers working in various Medical Colleges in Chennai. But the sole Inspection Officer appointed by the second respondent by his proceedings dated 29.8.2006, is the Dean of Theni Medical College, though the inspection is scheduled to take place at Tiruvallore.

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20. Therefore, in my considered view, the Government was justified in ignoring the inspection conducted on 1.9.2006 and the

report submitted by the sole Inspecting Officer on 1.9.2006, both on the ground that the appointment of the sole Inspecting Officer was not with the knowledge or consent of the Government and also on the ground that it lacked credibility. Under such circumstances, I am unable to find fault with the Government in issuing the letter dated 7.11.2006 instructing the second respondent to constitute an Inspection Team and the consequential action of the second respondent in issuing the impugned communication dated 20.11.2006 appointing an Inspection Team of two Officers.

21. Though the learned Advocate General also made submissions about the track record of the Engineering College run by the same petitioner-Trust and pleaded with me to take judicial notice of newspaper reports pointing out student unrest and the transfer of several students of the Engineering College run by the petitioner-Trust to the various other Engineering Colleges, forcing the Government to adopt a cautious approach, I do not wish to dwell on the said aspect, in the absence of any pleading to that effect. Neither the communication of the Government dated 7.11.2006 nor the impugned order of the second respondent dated 20.11.2006, makes any reference to any of those things and even the counter-affidavits does not contain a reference to the same. Therefore, I am unable to take any judicial notice of those things, for testing the validity of the impugned order dated 20.11.2006.

22. Coming to the scope of the inspection to be conducted by the Government for the purpose of grant of Essentiality Certificate, the learned Advocate General contended that after the issue of Medical Council of India Regulations 1999, the State Government is imposed with an obligation to satisfy itself about the availability of infrastructural facilities as per Medical Council of India Norms. Section 10-A(2)(a) of The Indian Medical Council Act, 1956, requires every person or Medical College seeking permission to establish a Medical College or open a new or higher course of study or increase its admission capacity, to submit a scheme to the Central Government. The scheme should be in such form and contain such particulars as may be prescribed. Section 33 empowers the Medical Council to make Regulations and under Clause (fa) of Section 33. The Regulations framed by the Council shall include the form of the Scheme referred to in Section 10-A (2)(a) and (b) of the Act.

23. In exercise of the power conferred by Section 10-A r/w Section 33 of The Indian Medical Council Act, 1956, the Medical Council of India issued certain regulations in the year 1993, known as "The Establishment of new Medical Colleges, opening of Higher Courses of study and increase of admissions capacity in Medical Colleges Regulations, 1993."

24. The scheme referred to in Section 10-A(2)(b) of the Act, was given a shape under Regulation (2) of the said Regulations and the same contained the eligibility criteria as well as qualifying criteria. Para-3 of the qualifying criteria referred to the Essentiality Certificate to be obtained by an applicant from the State Government, regarding the desirability and feasibility of having the proposed Medical College at the proposed location. But the said Regulation of the

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year 1993 did not prescribe any particular form in which the Essentiality Certificate is to be issued by the State Government.

25. However, by a notification dated 20.7.1999, the Medical Council of India issued a new set o regulations known as "Establishment of Medical College Regulations 1999". In the scheme issued under Regulation 3 of the said Regulations of the year 1999, a person seeking permission to set up a Medical College is required to submit an Essentiality Certificate in Form-2. The contents of Form-2 are as follows:-

"FORM 2

Subject: Essentiality Certificate

No....

Government of ...

The Department of Health

dated, the ...

To

(applicant),

Sir,

The desired certificate is as follows:

(1) No. of institutions already existing in the State.

(2) No. of seats available or number of doctors being produced annually.

(3) No. of doctors registered with the State Medical Council.

(4) No. of doctors in Government Service.

(5) No. of Government Posts vacant and those in rural/difficult areas.

(6) No. of doctors registered with employment exchange.

(7) Doctor-population ratio in the State.

(8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.

(9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.

(10) Full justification for opening of the proposed College.

(11) Doctor-patient ratio proposed to be achieved.

The (name of the person) ... has applied for establishment of a medical college at ... On careful consideration of the proposal, the Government of ... has decided to issue an essentiality certificate to the applicant for the establishment of a medical college with ... (no.) seats.

It is certified that:

(a) The applicant owns and manages a 300-bedded

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hospital which was established in ...

(b) It is desirable to establish a medical college in the public interest.

(c) Establishment of a medical college at ... by ... (name of the society/trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per the MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government.

Yours faithfully,
(signature of the competent authority)"

26. As seen from the format of Form-2 extracted above, the Certificate contains two parts. The first part provides only the statistics regarding the desirability and feasibility of establishing a Medical College at a particular location. However, the second part contains a commitment from the State Government with regard to four specific aspects. It is the last aspect contained in Clause(d) of the said Certificate, which has given a leverage for the State Government to look into the availability of adequate clinical material as per the Medical Council of India Norms. If Clause (d) was not incorporated in Form-2, then the scope of inspection and enquiry to be conducted by the State Government should be restricted only to the desirability and feasibility. The insertion of Clause(d) in the Essentiality Certificate, has changed the complexion of the game.

27. As a matter of fact, the scope of the inspection to be conducted by the State Government, after the issue of 1999 Regulations, came up for consideration before the Supreme Court in Government of A.P. vs. Medwin Educational Society and Others ((2004) 1 SCC 86)). After extracting Form-2, the Supreme Court held in paras-27 and 28 of the judgment as follows:-

"27. Grant of the said certificate in the prescribed form, therefore, emanates from the scheme framed under the parliamentary legislation. The said form is a part of the Regulations which are required to be considered in the light of the parliamentary Acts.

28. By reason of clause 11(d), a responsibility has been cast upon the State Government to give an undertaking that in case the applicant who seeks to establish a medical college, fails to create infrastructure for the medical college as per the norms laid down by the Council and in the event fresh admissions are stopped by the Central Government, the State Government shall be obligated to take over the responsibility of the

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students already admitted in the college. Such, an undertaking on the part of the State Government is unequivocal and unambiguous."

28. The argument that the conferment of such a power on the State Government amounted to abdication of the powers of the Central Government in terms of Entry 66 in List I of Seventh Schedule, was repelled by the Supreme Court in para-31 of the judgment. The conferment of the power on the state Government to make an enquiry for the purpose of issue of a Certificate in Form-2 was held to be only a delegation of part of the functions of the Central Government in para-35 of the judgment as follows:-

"35. It is interesting to note that keeping in view the practical difficulties faced by the Central Government or the statutory bodies like the Medical Council of India or the University Grants Commission, some power is sought to be delegated to the State so as to make the parliamentary statute completely workable. Such "play in the joint" is also desirable having regard to the federal structure of our Constitution."

Therefore, it cannot be contended that the State Government is not entitled to look into the satisfactory compliance with Medical Council of India Norms, especially after the issue of 1999 Regulations.

29. Ms.B.Saraswathi, learned counsel for the petitioner relied upon various decisions of this Court as well as the Supreme Court for the proposition that the State Government cannot encroach into the territory of enquiry to be conducted by the Medical Council of India. In other words, it is the contention of the learned counsel for the petitioner that instead of confining itself to an enquiry regarding the desirability and feasibility of establishing a College, the State Government had unnecessarily gone into the availability clinical material and other material as per the Medical Council of India Norms.

30. However, I do not propose to go into the said question, for the simple reason that the order of the State Government dated 28.8.2006 pointing out seven deficiencies, was not challenged by the petitioner. On the other hand, the petitioner submitted a compliance report dated 29.8.2006 and submitted itself to an inspection, as ordered by the second respondent by his proceedings dated 29.8.2006. In other words, the petitioner has waived its rights to challenge the rejection order dated 28.8.2006, but chose to challenge only the order dated 20.11.2006 by which a re-inspection has been ordered. Therefore, the only question that has fallen for consideration in this writ petition is as to whether a re-inspection was justified or not. In view of the suspicious circumstances surrounding the issue of the order dated 29.8.2006 and the Inspection Report dated 1.9.2006, the re-inspection ordered by the impugned proceedings appears to be perfectly justified and consequently, the writ petition is liable to be rejected.

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31. Coming to the contempt petition, it is seen that the

contempt petition arose out of the order dated 26.7.2006 passed in W.P.No.22207 of 2006, the operative portion of which reads as follows:-

> "4. The writ petition is disposed of as follows:-
>
> In view of the compliance report furnished on the petitioner, the respondents are directed to re-inspect the petitioner-Trust within the period of three weeks from the date of receipt of a copy of this order and pass orders with regard to their application for Essentiality Certificate in accordance with law. No costs. Consequently, connected miscellaneous petition is closed."

32. As seen from the operative portion of the order extracted above, the respondents were obliged to re-inspect the institution, within three weeks. The said order dated 26.7.2006 was actually issued on 8.8.2006 as seen from the endorsements made by the Current Section. Therefore, the respondents had time upto 29.8.2006 to inspect the institution. But even before getting a certified copy of the order, the first respondent issued a letter dated 27.7.2006, in pursuance of which the second respondent appointed a Team of Inspecting Officers by a letter dated 29.7.2006. The inspection was carried out on 2.8.2006 and the report submitted on 10.8.2006, based upon which, an order was passed on 28.8.2006, pointing out seven deficiencies. Thus, the order dated 26.7.2006 passed in W.P.No.22207 of 2006, had been duly complied with, before the expiry of the period of three weeks from the date of issue of the copy of the order. Therefore, I do not find any disobedience much less willful disobedience on the part of the respondents in complying with the order dated 26.7.2006 in W.P.No.22207 of 2006. Consequently, the contempt petition is liable to be dismissed.

33. For the foregoing reasons, the writ petition as well as the contempt petition are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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Svn.

To

1.The Secretary,
State Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-9.

2.Director of Medical Education,
Kilpauk, Chennai-9.

+1cc to Mr.B.Saraswathi,Advocate Sr 583

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WP No.45520 of 2006
And
Contempt Petition
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